

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JUNE 14 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

CRAIG EUGENE MANKE,

Appellant.

2 CA-CR 2006-0274

DEPARTMENT A

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. CR2005333

Honorable R. Douglas Holt, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Julie A. Done

Phoenix
Attorneys for Appellee

Meredith Little

Tucson
Attorney for Appellant

V Á S Q U E Z, Judge.

¶1 After a jury trial, appellant Craig Manke was convicted of aggravated assault, endangerment, and disorderly conduct with a weapon. The trial court sentenced him to

consecutive, presumptive prison terms of 7.5 years, one year, and 2.25 years, respectively. On appeal, Manke challenges the consecutive term for the endangerment conviction. He also contends the trial court abused its discretion when it excluded evidence pertaining to illegal activities allegedly engaged in by the victim of the aggravated assault.

¶2 We address the evidentiary issue first. We will not disturb a trial court's ruling on the admission of evidence absent an abuse of the court's discretion. *State v. Hampton*, 213 Ariz. 167, ¶ 45, 140 P.3d 950, 961 (2006). We see no abuse here.

¶3 The evidence at trial, viewed in the light most favorable to sustaining the verdicts, *see State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997), established the following. The victim, Michael, had previously socialized with Jennifer and Manke, who were cohabiting. On one occasion, Michael had gone to Jennifer's home to check on her at her mother's request; however, Manke was there with Jennifer and did not want Michael to visit. On another occasion, Michael was in his own home with his wife Susan and their son when someone in a car began honking the horn. Michael went to see who it was and saw Manke in the street walking around the back of Manke's car. Michael noted Manke had a "deranged" look, and the safety strap over a holstered revolver he was wearing was undone. When Manke pulled out the gun and pointed it at Michael's chest or head area, Michael put his hands in the air and repeatedly urged Manke to calm down, asking what was going on. Michael testified: "I was begging for my life." Manke accused Michael of trying to steal his girlfriend, which Michael denied.

¶4 Susan went outside when she saw through a window that Michael's arms were in the air, believing the situation did not "look right." Manke confronted Susan as she came out, pointed the gun at her, and fired a shot. Michael was continuing to try to distract Manke, begging him not to hurt Susan, when Jennifer came around Manke's car and grabbed Manke with both arms, which gave Susan the opportunity to run inside the house and call 911. Michael had been behind Susan's car and came out only when he heard the sound of Manke's car leaving.

¶5 Manke claimed he had acted in self-defense. He testified that he had gone to Michael's house to talk to him about Jennifer but took a gun because he knew Michael carried a gun, and he was afraid, claiming Michael previously had threatened him. Before trial, Manke sought to introduce evidence that Michael was not trustworthy, that he was a counterfeiter, and that he had supplied illegal drugs to Jennifer. The trial court stated: "We are not going to have a bunch of hearsay, bad reputation, other bad acts come in that he thought he was a counterfeiter for other reasons." It precluded Manke from introducing such evidence through other witnesses but permitted Manke to testify about what he personally had observed in this regard. The court reiterated its belief in the propriety of that ruling throughout the trial, sustaining the prosecutor's objections to defense counsel's questions. Manke contends the court abused its discretion, arguing this was permissible character evidence, *see* Rule 404(a) and (b), Ariz. R. Evid., 17B A.R.S., because it was offered to support his defense and establish his state of mind. He contends the evidence

would have shown that Michael “was not trustworthy as a witness” and that “[e]vidence of drug selling would have shown Appellant’s need to confront Mike in order to protect Jennifer from h[im].”

¶6 Manke has not established the trial court abused its discretion. Manke initially proffered the evidence “to show . . . [his] intent . . . in going over to . . . [the victim’s] house[,] [s]pecifically to stop him from giving drugs to his girlfriend . . . and he wanted to confront [the victim] for hitting on Jen.” As the state argued below, Michael’s reputation as a drug dealer or counterfeiter was not relevant; it did not relate to a reputation for violence that, perhaps, could have rendered such character evidence admissible. As the state had argued, Manke had created the situation. And, as the trial court noted in refusing to allow the evidence, even if it were appropriate to introduce, the court would instruct the jury that “no person may create or provoke a difficulty giving rise to the need to defend himself and then claim the right of self-defense.” The court was correct, as was its well-placed reliance on *State v. Sourivathong*, 130 Ariz. 461, 463, 636 P.2d 1243, 1245 (App. 1981) (“When it is uncontroverted that the accused was at fault in provoking the difficulty which necessitated the defensive use of force, the court should usually refuse to instruct on self-defense.”).

¶7 Notwithstanding Manke’s testimony about Michael’s flirtations with Jennifer and his testimony that he had seen Michael and Jennifer counterfeit money and that they had threatened him if he told anyone, the court correctly precluded the proffered evidence. The

evidence simply was not relevant, given that the undisputed evidence was that Manke had gone to Michael's house armed with a gun. Manke created the situation. Michael's and Jennifer's reputations and alleged criminal conduct with illegal drugs or counterfeiting was not admissible for any proper purpose under Rule 404(a) or (b) and was irrelevant.

¶8 Manke also challenges the consecutive prison term on the endangerment offense. He argues that "[t]he last offense brings in no new fact or crime or legal element and thus endangerment should receive a sentence concurrent with the other two offenses, not consecutive." The issue was raised at sentencing, and the trial court rejected Manke's arguments. The court did not err.

¶9 The proper analysis, as the state points out, is whether each of the three convictions was for a separate act under A.R.S. § 13-116 and our supreme court's analysis of the statute and the double-jeopardy principle behind it in *State v. Gordon*, 161 Ariz. 308, 312, 778 P.2d 1204, 1208 (1989). The trial court correctly rejected Manke's argument that, because the same weapon was used for all three offenses, at the least, endangerment had to involve the same act. Manke committed and completed the offense of aggravated assault when he first pointed the gun at Michael's chest and threatened him with it. *See* A.R.S. §§ 13-1203 (elements of assault), 13-1204 (elements of aggravated assault). He endangered Susan, as well as Michael, by firing a shot at Susan and again pointing the gun at Michael. *See* A.R.S. § 13-1201. And, as Jennifer struggled to disarm Manke, he committed disorderly conduct with respect to Susan, Michael, their son, and the neighborhood. After considering

the evidence to support the two offenses, there was sufficient remaining evidence that he had committed disorderly conduct. *See* A.R.S. § 13-2904. It is of no moment that he was acquitted of aggravated assault on Susan. We agree with the state that, because multiple victims were involved, even assuming the evidence regarding Manke’s endangerment and disorderly conduct was the same, the consecutive terms were appropriate. *See State v. White*, 160 Ariz. 377, 381, 773 P.2d 482, 486 (App. 1989). We also agree with the state that consecutive terms were “permissible because Appellant assaulted Michael . . ., endangered multiple victims, including Michael . . ., Susan . . ., Jennifer . . ., and the surrounding neighbors, by his reckless conduct with a gun, and disturbed the peace of the entire . . . family, . . . and the neighborhood by his reckless conduct with his gun.” And the trial court was equally correct when it stated: “These are separate crimes and they can be separately found by the factors supporting each one, deducting out those factors that are already determined for endangerment or disorderly conduct.”

¶10 The convictions and sentences are affirmed.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Presiding Judge